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Proposed Regulation Agency Background Document

Agency name	Commission on Virginia Alcohol Safety Action Program
Virginia Administrative Code (VAC) Chapter citation(s)	24-VAC35-80
VAC Chapter title(s)	Alcohol Safety Action Program Regulations
Action title	Creation of Alcohol Safety Action Program Regulations
Date this document prepared	November 23, 2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Commission on Virginia Alcohol Safety Action Program (VASAP) proposes to create regulations for the state-wide Virginia Alcohol Safety Action Program. Substantive matters include defined terms, the purpose of the regulatory action, an emergency declarations section, requirements for Alcohol Safety Action Program (ASAP) staffing and accessibility to the public, creation and make-up of ASAP policy boards and meeting processes, ASAP unexpended revenue, ASAP audits, financial records and reporting requirements, ASAP budgetary process and special funding requests, ASAP certification and suspension or revocation of certification, ASAP case management process and procedures, ASAP privacy and security procedures, ASAP personnel policies and ASAP employee certification to include requirements and suspension or revocation of certification.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

“ASAP” means an Alcohol Safety Action Program established by the Commission or any county, city, town or any combination thereof for the purposes of providing probation, education and rehabilitation services for individuals referred to the program by the court, the DMV or any other Commission-approved referral source.

“DMV” means the Virginia Department of Motor Vehicles.

“VASAP” means the Virginia Alcohol Safety Action Program.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

The Commission on VASAP is empowered by the Code of Virginia (18.2-271.2) to “establish and ensure the maintenance of minimum standards and criteria for program operations and performance, accounting, auditing, public information and administrative procedures for the various local alcohol safety action programs and shall be responsible for overseeing the administration of the statewide VASAP system.”

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

The Commission on VASAP is empowered by the Code of Virginia (18.2-271.2) to “establish and ensure the maintenance of minimum standards and criteria for program operations and performance, accounting, auditing, public information and administrative procedures for the various local alcohol safety action programs and shall be responsible for overseeing the administration of the statewide VASAP system.”

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The state-wide VASAP system is crucial to highway safety throughout the Commonwealth of Virginia. It is imperative that the local alcohol safety action programs operate efficiently and are managed appropriately to ensure financial solvency and adequate services for citizens of the Commonwealth.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

Section 24VAC35-80-10 provides a definition of terms.

Section 24VAC35-80-20 reserved

Section 24VAC35-80-30 grants the Commission with the right to suspend service-related requirements of the regulations in geographical areas where there exists a federal or state disaster or declaration of emergency.

Section 24VAC35-80-40 requires minimum Alcohol Safety Action Program (ASAP) staffing requirements and hours of operation for public access.

Section 24VAC35-80-50 established a process for the creation and overall make-up of ASAP policy boards and meeting requirements.

Section 24VAC35-80-60 grants the Commission the right to collect unexpected ASAP revenues in the Commission's duties to establish and ensure the maintenance of minimum standards and criteria for program operations.

Section 24VAC35-80-70 cites ASAP audit and financial record requirements, specifically the requirements for submitting required financial documents to the Commission in a timely fashion.

Section 24VAC35-80-80 provides requirements pertaining to the ASAP budgetary process and procedures to be followed for requests for allocation of commission funds.

Section 24VAC35-80-90 sets forth the certification process for all ASAPs and the option of the Executive Director to establish a Regional Leadership Team to assist ASAPs in achieving and maintaining Commission certification standards.

Section 24VAC35-80-100 addresses the reasons and processes related to suspension or revocation of certification of an ASAP or ASAPs. This section covers reasons for suspension and the process when a revocation of an ASAP certification occurs.

Section 24VAC35-80-110 requires all ASAP personnel to adhere to the VASAP Case Management Policy and Procedure Guidelines established by the Commission and mandated training attendance.

Section 24VAC35-80-120 sets forth the requirements on the handling of ASAP offender records in a confidential manner and addresses document retention.

Section 24VAC35-80-130 sets forth the requirements for all ASAP employees pertaining to personnel policies, conflicts of interest in supervision and employee evaluations.

Section 24VAC35-80-140 establishes ASAP employee certification requirements to perform any ASAP services in the Commonwealth of Virginia. This section sets forth the process for obtaining certification along with reasons for denial, suspension or revocation of the individual certification.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The proposed Alcohol Safety Action Program regulations set forth required standards for hours of operation, program and employee certification, staffing levels, auditing and financial reporting and case management processes and procedures. In addition, the regulations provide the Commission with the right to collect ASAP unexpended revenues to ensure financial solvency of the ASAPs and the maintenance of minimum standards and criteria for program operations and performance, accounting, auditing, public information and administrative procedures for the various local alcohol safety action programs. This combination of requirements sets forth a standardization of processes and ensures financial solvency throughout the state ensuring that citizens receive equitable, high-quality services no matter where they reside and improves transportation safety in the Commonwealth of Virginia.

There are no disadvantages to the public or the Commonwealth.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no applicable Federal requirements or requirements that exceed applicable Federal requirements in this proposal.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

No agency, locality or entity is particularly affected by these proposed regulations. These regulations apply directly to the state-wide VASAP system which is regulated by the Commission on VASAP.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits) anticipated to result from the regulatory change. When describing a particular economic impact,

specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources. 	<p>Fees will only be imposed if the policies are not adhered to as required.</p> <p>24VAC35-80-70 (C)(1) requires the ASAP to pay the Commission a \$25 fee for each calendar day, up to 5 days, that a required monthly report is late in its submission to the Commission on VASAP.</p> <p>24VAC35-80-70 (C)(2) requires the ASAP to pay the Commission a \$100 fee for each calendar day, after 5 days, in which a required monthly report is late in its submission to the Commission on VASAP.</p> <p>24VAC35-80-140 (B) requires a \$250 payment to the Commission by the ASAP whenever an ASAP employee, applying for a VASAP Certification Letter, is required to take a second certification exam due to failing the first attempt.</p> <p>24VAC35-80-140 (E) requires a \$500 per occurrence fee to be paid by the ASAP to the Commission whenever an ASAP employee performs ASAP services without a valid VASAP Certification Letter. This excludes new ASAP employees within the first 90 days of employment.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>No economic impact.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The fees listed above ensure program compliance and standardization of services throughout the Commonwealth.</p>

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

<p>Projected costs, savings, fees, or revenues resulting from the regulatory change.</p>	<p>No economic impact.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>No economic impact.</p>

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>Local Alcohol Safety Action Programs will only incur an impact in situations where regulations were not adhered to as required.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <ul style="list-style-type: none"> a) is independently owned and operated, and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million. 	<p>There are currently 24 local Alcohol Safety Action Programs.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements. 	<p>Fees related to a failure to adhere to program and regulatory requirements.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>In 2021 there were 42,657 referrals for services into the state-wide VASAP system. In 2022 there have been 39,909 referrals through December 29, 2022.</p> <p>The fees listed above ensure program compliance and standardization of services throughout the Commonwealth.</p> <p>There are multiple additional positive impacts to include enhanced highway safety, increased accountability of local programs, an increase in quality customer service, and most importantly, the protection of the integrity of the state-wide VASAP system.</p>

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

The only other option is to introduce multiple legislative recommendations to the General Assembly. Since these are new regulations, and include a wide-range of provisions, the regulatory option is the least burdensome of all other options considered.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

The proposed regulatory action does not impact small businesses.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

N/A

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency's response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

The Commission on VASAP is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Christopher Morris, Commission on VASAP, 1111 E. Main Street, Suite 801, Richmond, VA 23219, (804) 786-5895, FAX (804) 786-6286, chris.morris@vasap.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of this stage of this regulatory action.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between the existing VAC Chapter(s) and the proposed regulation. If the existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements
24VAC35-80-10	Definitions		Definition of terms
24VAC35-80-20	Reserved		
24VAC35-80-30	Emergency Declarations		Provides the Commission with the right to suspend service-related requirements of these

			regulations in areas where a federal or state disaster or declaration of emergency exists. This section provides the Commission on VASAP with the flexibility to continue to provide quality customer service and protect highway safety during times of emergency.
24VAC35-80-40	Alcohol Safety Action Program administrative structure and accessibility		Requires minimum staffing levels and ASAP hours of operation. There is no impact to local programs in regards to increased staffing or technology upgrades to meet the requirements of being open to the public during normal business hours. The change provides consistency across the state so that every citizen receives equitable access to services. Subsection C is included to address concerns with a pattern of localized customer service complaints that fail to be addressed by local leadership.
24VAC35-80-50	Alcohol Safety Action Program policy boards		Establishes a process for the creation and overall make-up of ASAP policy boards and meeting requirements. The requirement for a policy board is not new as policy boards are a requirement of Virginia Code 18.2-271.1 Subsection I. There is no change to term lengths of board members but composition of the board now requires the inclusion of a defense attorney member who practices DUI law.
24VAC35-80-60	Alcohol Safety Action Program revenues		This is a new authority which provides the Commission with the right to collect ASAP unexpended revenues in order to establish and ensure the maintenance of minimum standards and criteria for program operations and performance. There is a large discrepancy among programs throughout the state as it pertains to the amount of unexpended revenue on hand.

			<p>There are several programs that possess a large unexpended revenue balance while others possess very low unexpended revenue totals. A recent study completed by the VCU Performance Management Group of the state-wide VASAP system determined that revenue sharing and regionalization of programs are favorable remedies to ensure the stability of the VASAP state-wide system as we move into the future.</p>
24VAC35-80-70	Alcohol Safety Action Program audits and financial records		<p>Cites ASAP audit and financial record requirements, specifically the requirements for submitting required financial documents to the Commission in a timely fashion. Monthly financial reporting and annual budget approval processes are a current requirement so there is no impact on staffing. The Commission state office is working in partnership with some of the local ASAP Directors to create a new automated, web-based, financial platform that will result in increased training time initially but lead to a reduction in staff time needed to submit reports in the future. The August 1 deadline to submit the annual income statement to the Commission reduces the timeline to submit the report from 60 to 30 days. Less time is needed to submit the income statement due to the ASAPs requirement to submit monthly reports throughout the year; therefore, there is no impact to local program staffing.</p>
24VAC35-80-80	Alcohol Safety Action Program budgets and requests for allocation of commission funds		<p>Provides requirements pertaining to the ASAP budgetary process and procedures to be followed for requests for allocation of commission funds. There is no impact to the local</p>

			<p>programs as the budgetary approval process is a current requirement. The request for the allocation of Commission funds is new but has no negative impact to the local programs as this is simply a request for funding.</p>
24VAC35-80-90	Alcohol Safety Action Program certification		<p>Sets forth the certification process for all ASAPs and the option of the Executive Director to establish a Regional Leadership Team to assist ASAPs in achieving and maintaining Commission certification standards. The proposed text reflects current standards except for the inclusion of a Regional Leadership Team. The impact of the addition of the Regional Leadership team is to better enable local programs to consistently meet and exceed certification requirements and provide local programs with a valuable, additional resource.</p>
24VAC35-80-100	Suspension or revocation of certification of an Alcohol Safety Action Program		<p>Addresses the reasons and processes related to suspension or revocation of certification of an ASAP or ASAPs. This section covers reasons for suspension and the process when a suspension, or revocation, of an ASAP certification occurs. There are multiple positive impacts to include enhanced highway safety, increased accountability of local programs, an increase in quality customer service, and most importantly, the protection of the integrity of the state-wide VASAP system.</p>
24VAC35-80-110	Alcohol Safety Action Program case management processes and procedures		<p>Requires all ASAP personnel to adhere to the VASAP Case Management Policy and Procedure Guidelines established by the Commission and mandated training attendance. The proposed text reflects current standards.</p>

24VAC35-80-120	Alcohol Safety Action Program privacy and security procedures		Sets forth the requirements on the handling of ASAP offender records in a confidential manner and addresses document retention. The proposed text reflects current standards.
24VAC35-80-130	Alcohol Safety Action Program personnel policies		Sets forth the requirements for all ASAP employees pertaining to personnel policies, conflicts of interest in supervision and employee evaluations. The proposed text reflects current standards except for the requirement for ASAP directors to perform annual employee evaluations on an official, standardized Commission form. There are multiple positive impacts to include enhanced highway safety, increased accountability of local programs and their employees, an increase in quality customer service, and most importantly, the protection of the integrity of the state-wide VASAP system.
24VAC35-80-140	Alcohol Safety Action Program employee certification, revocation or suspension.		Establishes ASAP employee certification requirements to perform any ASAP services in the Commonwealth of Virginia. This section sets forth the process for obtaining certification along with reasons for denial, suspension or revocation of the individual certification. These are all new requirements modeled on the current requirements for vendors that are contracted to provide ignition interlock and remote alcohol monitoring services in the Commonwealth of Virginia. These requirements would result in additional staff time at the local level and possibly some expense for the background checks. There are multiple positive impacts which greatly outweigh the increase in staff time and background check expenses to include enhanced highway safety, increased

			accountability of local programs, increase in local program employee job knowledge, an increase in quality customer service, and most importantly, the protection of the integrity of the state-wide VASAP system.
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